

Application No. 10/817,621

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b. Remarks

Claims 1, 2, and 4-24, as amended, are pending in the application. Nonelected Claims 4, 7-12, and 20-22 have been withdrawn from consideration. Claims 1-3, 5, 6, 13-15, 17 and 18 stand rejected. Claim 3 has been cancelled. Claims 16 and 19 have been objected to, but have been rewritten (see below). New Claims 23 and 24 (angled head) depend on rewritten Claims 16 and 19, respectively, which are believed to be in condition for allowance.

1. Election/Restriction

Claims 4, 7-12, and 20-22, which were subject to a restriction/election requirement, have been withdrawn from consideration by the Examiner. According to the May 4, 2005 Office action, Applicant timely traversed the restriction/ election requirement.

2. Rejection under §112, second paragraph

Claims 3 and 19 stand rejected under 35 USC §112, second paragraph. Claim 19 has been amended to read "formed as a grate" (rather than "grate-like"), which term has also been included in amended Claim 1. Claim 3 has been cancelled. It is believed that the claims particularly point out and distinctly claim the subject matter. No new matter has been introduced by this amendment.

3. Rejection under §102(b)

(a) Claims 1, 3, and 6 stand rejected under 35 USC §102(b) as being anticipated by Fredrickson. Applicants respectfully disagree with the statement on page 3 of the Application No. 10/817,621

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Office action that FIGS. 5-7 of Fredrickson show a head portion formed as a grate. It is believed that amended Claim 1, which includes the "grate" limitation from cancelled Claim 3, is in condition for allowance. According to Fredrickson in column 4, lines 49 and 54, a "narrow rake" with "tines 138" is shown in FIG. 5, which is not the same as a grate. Claim 6 depends on amended Claim 1.

(b) Claims 1-3 and 6 stand rejected under 35 USC §102(b) as being anticipated by Martinez. Applicants respectfully disagree with the statement on page 4 of the Office action that FIG. 7 of Martinez shows a head portion formed as a grate; it is believed that amended Claim 1, which includes this limitation from cancelled Claim 3, is in condition for allowance. FIG. 7 shows a rake attachment 60 with five tines 62, per column 5, lines 17-18 of Martinez. The tines 62 have arcuate tips 64, according to column 5, lines 22-23 of Martinez. Tines with arcuate tips are not the same as a grate. Claims 2 and 6 depend on amended Claim 1.

Where a claim is rejected as anticipated by a cited reference, no question of obviousness must be present. "In other words, for anticipation under 35 USC 102, the reference must teach every aspect of the claimed invention, either expressly or impliedly. Any feature not directly taught must be inherently present." See MPEP §706.02(a). A head portion formed as a grate is not taught by Fredrickson or Martinez.

(c) Claims 1, 3, and 5 stand rejected under 35 USC §102(b) as being anticipated by the Streeter design patent. Applicants submit that Streeter's vegetable masher is not a "packer apparatus for pushing leaves or other debris into a trash container", as stated in Claim 1. Also, Streeter's vegetable masher design patent does not teach an "open opposite end" on the mount portion, per Applicants' Claim 1 (see his figure). For anticipation under 35 USC 102, the reference must teach every aspect of the claimed invention. It is submitted that Streeter does not.

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(d) Lastly, Claims 1, 2, 13, 15, 17, and 18 stand rejected under 35 USC §102(b) as being anticipated by Conover. The “grate” limitation of cancelled Claim 3 (which was not rejected over Conover) has been incorporated into amended Claim 1, which is believed to be in condition for allowance. Claim 2 depends on Claim 1. Also, Conover’s boat hook and pole is not a “packing apparatus” per Applicant’s Claim 1. Referring to page 5, #18, of the Office action, the boat hook comprises a *base* 22, per column 2, lines 18-19; the head portion would be the opposite, hook end of the device. The boat hook 20 is, of course, not substantially planar. Amended Claims 17 and 18 depend on allowable Claim 16, which is believed to be in condition for allowance.

Since Applicants’ invention has not been patented or described in the cited patents, Applicants’ invention is not believed to be anticipated under Section 102(b). Allowance of the claims is therefore requested.

4. Rejection under §103(a)

Claim 14 stands rejected under 35 USC §103(a) as being unpatentable over Conover. Amended Claim 14 depends on amended Claim 1, which is believed to be allowable (see discussion in #3, above).

5. Allowable Subject Matter

The Office action acknowledges that Claims 16 and 19 are directed to allowable subject matter. Amended Claims 16 and 19 have been rewritten in independent form and the limitations of the base claim (Claim 13 for both) and the intervening claim (Claim 15, for Claim 16) have been included. No new matter has been introduced by this amendment. Dependent Claims 17 and 18 have been amended to depend on amended Claim 16, which is believed to be in condition for allowance.

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New Claims 23 and 24 (angled head) depend on rewritten Claims 16 and 19, respectively, which are believed to be in condition for allowance. Antecedent basis is found in the specification (see Paragraph [0049]).

Although Applicants respectfully disagree with these rejections, Applicants seek to gain an auspicious allowance and have therefore voluntarily amended the claims. No new matter has been added by these amendments. Applicants would be pleased to supply additional information in support of this application. Applicants request that these amendments be made of record in the case and considered by the United States Patent and Trademark Office Examiner, and that the claims as amended be allowed.

Respectfully submitted,

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